

From: [Rebecca Watson](#)
To: ["Josephson, Temi"](#); [Brown, Laura \(Laura.Brown@sol.doi.gov\)](#)
Cc: [Peter Umhofer \(pumhofer@e2strategic.com\)](#)
Subject: Status: Eagle Crest Energy
Date: Thursday, June 29, 2017 5:56:44 PM

Dear Laura and Temi – Before the holiday hits, I wanted to do a follow-up status check on 1) the BLM protest team and process; and 2) obtaining copies of the protests for Eagle Crest Energy's review.

As to the first, the BLM Project Manager for the Eagle Crest Energy ROW EA informed my client today that Andrew Strausfogel is the lead for the protest resolution team and that BLM is working on how to juggle this assignment with other similar work. Is that correct? What is the protest resolution process and anticipated timeline? As to the second, we also were told that there are a total of **6** protests: 1) NPCA/Defenders of Wildlife; Colorado River Indian Tribes; Center for Biological Diversity; Charpieds; Sierra Club; and Tom O'Key. When can we get a copy of these protests and why is this such a challenge? Would it help if I filed a FOIA request for these? Happy to do so if this would result in getting the protests more quickly. Thanks for your consideration. Have a good 4th! Regards, Rebecca

Rebecca W. Watson
WELBORN SULLIVAN MECK & TOOLEY, P.C.
1125 17th Street, Suite 2200, Denver, CO 80202
EMAIL: rwatson@wsmtlaw.com
MAIN: 303-830-2500
DIRECT: 303-376-4463
FAX: 303-832-2366
WEBSITE: www.wsmtlaw.com
[HTTPS://WWW.LINKEDIN.COM/IN/RWLINKEDIN](https://www.linkedin.com/in/rwlinkedln)

LAW OF THE LAND

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From: [Rebecca Watson](#)
To: "Brown, Laura"
Cc: [Josephson, Temi](#); [Peter Umhofer \(pumhofer@e2strategic.com\)](mailto:pumhofer@e2strategic.com)
Subject: RE: Status: Eagle Crest Energy
Date: Thursday, June 29, 2017 6:45:12 PM

Thank you. I will do so. Regards, Rebecca

From: Brown, Laura [mailto:laura.brown@sol.doi.gov]
Sent: Thursday, June 29, 2017 4:13 PM
To: Rebecca Watson
Cc: Josephson, Temi; Peter Umhofer (pumhofer@e2strategic.com)
Subject: Re: Status: Eagle Crest Energy

Dear Rebecca: Your information regarding the protest process timing is accurate. Regarding the protests. Yes it would be helpful to file a FOIA to ask for copies--that is the normal process that BLM uses to release protest letters. Please don't hesitate to reach out to either of us. Hope everyone has a good Fourth of July. Laura

On Thu, Jun 29, 2017 at 5:56 PM, Rebecca Watson <RWatson@wsmtlaw.com> wrote:
Dear Laura and Temi – Before the holiday hits, I wanted to do a follow-up status check on 1) the BLM protest team and process; and 2) obtaining copies of the protests for Eagle Crest Energy's review.

As to the first, the BLM Project Manager for the Eagle Crest Energy ROW EA informed my client today that Andrew Strausfogel is the lead for the protest resolution team and that BLM is working on how to juggle this assignment with other similar work. Is that correct? What is the protest resolution process and anticipated timeline? As to the second, we also were told that there are a total of 6 protests: 1) NPCA/Defenders of Wildlife; Colorado River Indian Tribes; Center for Biological Diversity; Charpieds; Sierra Club; and Tom O'Key. When can we get a copy of these protests and why is this such a challenge? Would it help if I filed a FOIA request for these? Happy to do so if this would result in getting the protests more quickly. Thanks for your consideration. Have a good 4th! Regards, Rebecca

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--

Laura Brown, Associate Solicitor

Division of Land Resources

Office of the Solicitor

U.S. Department of the Interior

1849 C St., NW

Washington, DC 20240

Phone: 202 208-6545

Cell: 202 359-2712

Fax: 202 219-1792

Laura.Brown@sol.doi.gov

Excellence - Integrity - Service

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From: [Tina Johnson](#)
To: BLM_WO_FOIA@blm.gov
Cc: mnedd@blm.gov; jperez@blm.gov; laura.brown@sol.doi.gov; temi.josephson@sol.doi.gov; [Rebecca Watson](#); pumhofer@e2strategic.com
Subject: FW: Eagle Crest Energy FOIA Request - Case File No. CACA-054096, BLM-DOI-CA-D060-2016-0017-EA
Date: Friday, June 30, 2017 11:41:07 AM
Attachments: [FOIA Request Protests CACA-054096, BLM-DOI-CA-D060-2016-0017-EA 06302017.PDF](#)

From: Tina Johnson
Sent: Friday, June 30, 2017 9:32 AM
To: 'rwitt@blm.gov'
Cc: Rebecca Watson; pumhofer@e2strategic.com
Subject: Eagle Crest Energy FOIA Request - Case File No. CACA-054096, BLM-DOI-CA-D060-2016-0017-EA

Dear Mr. Witt:

Please find attached a FOIA Request regarding Protests of "Eagle Crest Energy Gen-Tie and Water Pipeline CDCA Plan Amendment," Case File No. CACA-054096, BLM-DOI-CA-D060-2016-0017-EA. A hard copy will follow via FedEx overnight delivery.

Regards,

Tina Johnson
Legal Assistant to Rebecca Watson
WELBORN SULLIVAN MECK & TOOLEY, P.C.
1125 17th Street, Suite 2200, Denver, CO 80202
EMAIL: tjohnson@wsmtlaw.com
MAIN: 303-830-2500
FAX: 303-832-2366
WEBSITE: www.wsmtlaw.com

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June 30, 2017

BY EMAIL AND FEDERAL EXPRESS

Bureau of Land Management
Ryan Witt
FOIA Coordinator
Attn. FOIA Office (WO-640)
1849 "C" St. NW
Washington, DC 20240
rwitt@blm.gov

Re: Freedom of Information Act Request Concerning Protests of Eagle Crest Energy
Gen-Tie and Water Pipeline CDCA Plan Amendment, Case File No. CACA-
054096, BLM-DOI-CA-D060-2016-0017-EA

Dear Mr. Witt:

This is a request under the Freedom of Information Act (5 U.S.C. § 552) ("FOIA") as amended by the Open Government Act of 2007, Pub. L. No. 110-175, the Department of the Interior's implementing regulations under FOIA, 43 C.F.R. Pt. 2, and the White House FOIA Memorandum, 74 *Fed. Reg.* 4683 (Jan. 21, 2009), submitted on behalf of Eagle Crest Energy ("Eagle Crest").

Eagle Crest is the applicant for a Bureau of Land Management ("BLM") Federal Land Policy and Management Act Title V right-of-way for a Federal Energy Regulatory Commission ("FERC") licensed hydro-power project in California. "Eagle Mountain Pumped Storage Hydroelectric Project." As part of the BLM permitting process, BLM prepared a land use plan amendment for the California Desert Conservation Area ("CDCA"). "Eagle Crest Energy Gen-Tie and Water Pipeline CDCA Plan Amendment," Case File No. CACA-054096, BLM-DOI-CA-D060-2016-0017-EA. BLM issued an Environmental Assessment and FONSI and Plan Amendment on May 3, 2016. The land use plan amendment protest period closed on or before June 6, 2017. Upon information and belief, six (6) protests were filed in the BLM-WO directed to Acting BLM Director, Mike Nedd. Eagle Crest requests copies of any and all protests filed concerning the above-described CDCA plan amendment.

We have attempted to provide sufficient identifying information concerning the documents covered by this request. If you determine that any portion of this request does not reasonably describe the records sought, please notify us of that determination so that an attempt can be made to restate the request in a manner that will rectify any deficiency that you believe exists.

{00565736.1}

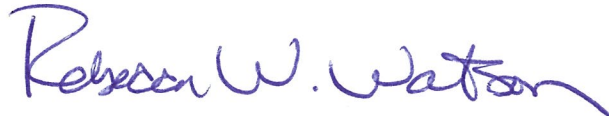
We will be pleased to pay all reasonable reproduction and search fees provided by regulation. Please contact the undersigned by telephone or e-mail if you have any questions about the scope of this request. For purposes of fees, we are in the category of "commercial-use requester."

In the event that you determine some of the requested documents may be withheld pursuant to 5 U.S.C. § 522(b), we request that you exercise your discretion to release those documents. Should you elect not to disclose documents determined to be exempt, please delete or redact such allegedly exempt portions of the documents, and provide a partial release of the document (any "reasonably segregable" portion) and identify in your response the nature of the deleted or redacted information. *See* Attorney General Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act (Mar. 19, 2009). Also, in the event that we are denied any document in its entirety or any portion of any requested document, please identify each entire document and each portion of any requested document with particularity and specify the statutory basis for the denial and the sound ground for invoking that basis. This consent to accept documents with deletions or redactions is intended to facilitate your prompt response and in no way waives our entitlement to the complete documents.

In accordance with 5 U.S.C. § 552(a)(6)(C)(i) requiring that records be made available "promptly" and 43 C.F.R. § 2.12, we look forward to receiving your response within 20 working days of your receipt of this request. Your response to this FOIA request should be directed to the undersigned. We would be happy to accept the documents in electronic form (Microsoft Word or Adobe pdf) or in hard copy. Thank you for your prompt attention to this request.

Sincerely,

WELBORN SULLIVAN MECK & TOOLEY, PC



Rebecca W. Watson

RWW:tj

cc: M. Nedd, Acting BLM Director
J. Perez, BLM-CA Director
L. Brown, Office of the Solicitor, WO
T. Josephson, Office of the Regional Solicitor, CA

From: [Rebecca Watson](#)
To: "Josephson, Temi"; Brown, Laura (Laura.Brown@sol.doi.gov)
Cc: Daniel Jorjani (daniel_jorjani@ios.doi.gov); Peter Umhofer (pumhofer@e2strategic.com)
Subject: follow-up: Eagle Crest Energy
Date: Monday, July 10, 2017 2:34:46 PM

Dear Laura and Temi – I want to follow up with you on the status of the two topics we discussed with Deputy Solicitor Jorjani on **June 23, 2017**: 1) NPS comments on the Eagle Crest Draft Cooperative Agreement; and 2) copies of the protests filed on the BLM's Eagle Crest Energy ROW/EA.

Protests: On the latter issue, on June 29th Laura directed us to file a FOIA request in order to obtain copies of the protests. On June 30th we filed a FOIA request with Ryan Witt, BLM FOIA officer. He was out of his office from 6/23-7/8. Peter Umhofer and I called Ryan Witt today at 1:30 p.m. ET to request a timeframe for BLM's response, but had to leave a voicemail. Your help in coordinating a rapid response to our FOIA request for the protests would be appreciated.

NPS Cooperative Agreement Draft: We still do not have a copy of this document. We have received mixed messages on whether or not it has left the Pacific Regional Solicitor's Office or is in the WO with Wendy Fink. After our call on June 23rd, we had hoped to be reviewing the NPS comments by this time. Can you provide us with an update of the status of the NPS comments on the draft document and when we might expect to receive it?

Thank you for your assistance with these requests.

Regards, Rebecca

Rebecca W. Watson
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1125 17th Street, Suite 2200, Denver, CO 80202
EMAIL: rwatson@wsmtlaw.com
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From: [Rebecca Watson](#)
To: "Laura Brown"
Cc: [Josephson, Temi](#); [Daniel Jorjani \(daniel_jorjani@ios.doi.gov\)](#); [Peter Umhofer \(pumhofer@e2strategic.com\)](#)
Subject: RE: follow-up: Eagle Crest Energy
Date: Tuesday, July 11, 2017 3:52:34 PM

Laura – I look forward to hearing from you and Temi on Wednesday. A call to my mobile (b) (6) and Peter's (b) (6) or an email to me and Peter would work best on Wednesday. Regards, Rebecca

From: Laura Brown [mailto:laura.brown@sol.doi.gov]
Sent: Tuesday, July 11, 2017 1:43 PM
To: Rebecca Watson
Cc: Josephson, Temi; Daniel Jorjani (daniel_jorjani@ios.doi.gov); Peter Umhofer (pumhofer@e2strategic.com)
Subject: Re: follow-up: Eagle Crest Energy

Dear Rebecca-Temi and I hope to be able to get back to you with an update tomorrow.

Best Regards,

Laura

Laura Brown, Associate Solicitor

Division of Land Resources
Office of the Solicitor
U.S. Department of the Interior
[1849 C St., NW](#)
[Washington, DC 20240](#)
Phone: [202 208-6545](tel:202-208-6545)
Cell: [202 359-2712](tel:202-359-2712)
Fax: [202 219-1792](tel:202-219-1792)
Laura.Brown@sol.doi.gov

On Jul 10, 2017, at 2:35 PM, Rebecca Watson <RWatson@wsmtlaw.com> wrote:

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From: [Rebecca Watson](#)
To: [Jerome Perez](#)
Cc: [Temi Josephson](#)
Subject: Re: Eagle Crest Protests
Date: Wednesday, July 12, 2017 9:14:09 PM

Thanks Jerry & Temi- much appreciated. I suspect we will want the attachments so a hard copy of those would work when convenient. I could provide my firms Fed Ex account if that would be helpful. Regards, Rebecca

Rebecca Watson
Morrison, CO

> On Jul 12, 2017, at 7:00 PM, Jerome Perez <jperez@blm.gov> wrote:

>

> Rebecca as Temi mentioned here are electronic copies of the protests. As indicated one had quite a number of attachments, which would not make it feasible to email. If you would like the attachments we can make a hard copy and mail them to you. Jerry

>

> Sent from my iPhone

>

> Begin forwarded message:

>

> From: "Meyer-Shields, Elizabeth" <eameyer@blm.gov<<mailto:eameyer@blm.gov>>>

> To: Jerome Perez <jperez@blm.gov<<mailto:jperez@blm.gov>>>, Kevin Tanaka
<kevin.tanaka@sol.doi.gov<<mailto:kevin.tanaka@sol.doi.gov>>>, "Niebauer, Erica"
<Erica.Niebauer@sol.doi.gov<<mailto:Erica.Niebauer@sol.doi.gov>>>, Joseph Stout
<j2stout@blm.gov<<mailto:j2stout@blm.gov>>>

> Cc: Danielle Chi <dchi@blm.gov<<mailto:dchi@blm.gov>>>, Gregory P Miller
<gmliller@blm.gov<<mailto:gmliller@blm.gov>>>

> Subject: Eagle Crest Protests

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> Liz

> --

>

> ~~~~~

>

> Elizabeth Meyer-Shields

>

> Planning & Environmental Coordinator

>

> Bureau of Land Management, California State Office

>

> 916-978-4672

>

> eameyer@blm.gov<<mailto:eameyer@blm.gov>>

> <Eagle Crest Protests.zip>

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To: [Jerome Perez](#)
Cc: [Temi Josephson](#)
Subject: Re: Eagle Crest Protests
Date: Wednesday, July 12, 2017 9:14:14 PM

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> To: Jerome Perez <jperez@blm.gov<<mailto:jperez@blm.gov>>>, Kevin Tanaka
<kevin.tanaka@sol.doi.gov<<mailto:kevin.tanaka@sol.doi.gov>>>, "Niebauer, Erica"
<Erica.Niebauer@sol.doi.gov<<mailto:Erica.Niebauer@sol.doi.gov>>>, Joseph Stout
<j2stout@blm.gov<<mailto:j2stout@blm.gov>>>

> Cc: Danielle Chi <dchi@blm.gov<<mailto:dchi@blm.gov>>>, Gregory P Miller
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> 916-978-4672

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> eameyer@blm.gov<<mailto:eameyer@blm.gov>>

> <Eagle Crest Protests.zip>

From: [Tina Johnson](#)
To: jperez@blm.gov; temi.josephson@sol.doi.gov
Cc: [Rebecca Watson](#)
Subject: RE: Eagle Crest Protests
Date: Thursday, July 13, 2017 11:17:29 AM

Mr. Perez:

Our firm's mailing address is as follows:

Welborn Sullivan Meck & Tooley
1125 17th Street
Suite 2200
Denver, CO 80202

Regards,

Tina Johnson

Legal Assistant to Rebecca Watson

WELBORN SULLIVAN MECK & TOOLEY, P.C.

1125 17th Street, Suite 2200, Denver, CO 80202

EMAIL: tjohnson@wsmtlaw.com

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From: Rebecca Watson
Sent: Wednesday, July 12, 2017 9:59 PM
To: Tina Johnson
Subject: Fwd: Eagle Crest Protests

Send them our mailing address please.

Rebecca W. Watson

Begin forwarded message:

From: Jerome Perez <jperez@blm.gov>
Date: July 12, 2017 at 7:17:24 PM MDT
To: Rebecca Watson <RWatson@wsmtlaw.com>
Cc: Temi Josephson <temi.josephson@sol.doi.gov>
Subject: Re: Eagle Crest Protests

Let me work on it here Rebecca, not sure our policies on that part of the request. Since I am travel status if you can provide me your address electronically I will get my folks working on it tomorrow. JP

Sent from my iPhone

On Jul 12, 2017, at 7:14 PM, Rebecca Watson <RWatson@wsmtlaw.com> wrote:

Thanks Jerry & Temi- much appreciated. I suspect we will want the attachments so a hard copy of those would work when convenient. I could provide my firms Fed Ex account if that would be helpful.
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<kevin.tanaka@sol.doi.gov<<mailto:kevin.tanaka@sol.doi.gov>>>, "Niebauer, Erica"
<Erica.Niebauer@sol.doi.gov<<mailto:Erica.Niebauer@sol.doi.gov>>>, Joseph Stout
<j2stout@blm.gov<<mailto:j2stout@blm.gov>>>
Cc: Danielle Chi
<dchi@blm.gov<<mailto:dchi@blm.gov>>>, Gregory P Miller
<gmler@blm.gov<<mailto:gmler@blm.gov>>>
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Elizabeth Meyer-Shields

Planning & Environmental Coordinator

Bureau of Land Management, California State Office

916-978-4672

[eameyer@blm.gov](mailto:eameyer@blm.gov)<<mailto:eameyer@blm.gov>>

<Eagle Crest Protests.zip>



**From:** [Josephson, Temi](#)  
**To:** [Rebecca Watson](#)  
**Cc:** [Barbara Goodyear](#); [Brown, Laura](#)  
**Subject:** Draft Agreement between Eagle Crest and NPS  
**Date:** Friday, July 14, 2017 4:54:32 PM  
**Attachments:** [ECE Agreement 2017 06 23 \(2\).docx](#)

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Rebecca,

Attached, please find the Department's comments and edits on the draft agreement that Eagle Crest sent to the NPS in January. Due to the change in administration and the need for this matter to be reviewed at the Departmental level, it has taken longer than we expected to transmit revisions to you. We appreciate your understanding.

The following information is provided to assist you in your review of the document. As an initial matter, you will note that the agreement would now be an agreement between Eagle Crest and the Department, on behalf of the NPS. On a day-to-day level, the agreement envisions that NPS and Eagle Crest will work together cooperatively on issues of mutual interest. However, the Department believes that this agreement should be executed at the Departmental level.

Provisions relating to the NPS's Boundary Study proposal have been added to the agreement. It is our understanding, based on Eagle Crest's comments during the public review process for the Boundary Study, that Eagle Crest did not oppose the withdrawal of certain public lands outside the FERC project boundary or the inclusion of those lands inside an expanded park boundary, should the Department determine that expansion of the park boundary is in the public interest. The Finding of No Significant Impact for the Boundary Study identified a modified version of Alternative C for implementation. The NPS adopted these modifications based on comments from Eagle Crest and consultation with the Bureau of Land Management.

We have modified your original language regarding a "good neighbor" relationship to state that the NPS and Eagle Crest desire to establish a good working relationship going forward.

The Department has determined that Eagle Crest should not reimburse NPS for monitoring costs associated with the project. As a result, the original language in Section II of the agreement has been removed.

The Department is very appreciative of Eagle Crest's desire to convey lands to the NPS at an appropriate time. To make this possibility more concrete, we have included a number of revisions to the agreement that introduce the concept of an option agreement (to be prepared) which would become a companion document to this agreement. The option contract would include provisions for phased transfers of land to the NPS, depending on the status of the FERC project and/or the status of Eagle Crest's financial obligations to CIL&D. The

provisions that describe this concept were built off of provisions that Eagle Crest was willing to agree to its earlier negotiations with NPS. You will see these concepts addressed in new Section II.

If you have any questions about the Department's revisions to the agreement, please contact Barbara Goodyear. Barbara will be the POC for further revision of the draft agreement. I will work with Barbara to finalize and gain final approval for DOI's participation in the agreement.

Thank you,

Temi Josephson  
Regional Solicitor

Barbara Goodyear  
Field Solicitor

**Clementine Josephson  
Regional Solicitor  
Pacific Southwest Region**

**Department of the Interior  
Office of the Solicitor  
2800 Cottage Way, E-1712  
Sacramento, California 95825**

**Tel.: 916-978-5682  
Fax: 916-978-5694**

**[clementine.josephson@sol.doi.gov](mailto:clementine.josephson@sol.doi.gov)**

COOPERATIVE AGREEMENT

GENERAL AGREEMENT

**BETWEEN**

**THE ~~NATIONAL PARK SERVICE~~ DEPARTMENT OF THE INTERIOR AND  
EAGLE CREST ENERGY COMPANY, EAGLE MOUNTAIN ACQUISITION,  
LLC, EAGLE MOUNTAIN, LLC, AND KAISER EAGLE MOUNTAIN, LLC  
REGARDING THE TRANSFER OF LAND AND FUNDING OF  
MITIGATION MEASURES RELATING TO JOSHUA TREE NATIONAL  
PARK FOR THE EAGLE MOUNTAIN PUMPED STORAGE HYDROELECTRIC  
PROJECT**

**AUTHORITY**

The Department of the Interior NPS is authorized to enter into this Cooperative General Agreement ("Agreement") under 16 USC § 1j, which states in relevant part that the Secretary may enter into cooperative agreements with participating private landowners for the purpose of protecting natural resources of units of the National Park System through collaborative efforts on land inside and outside of National Park System units 54 U.S.C. 100101 which provides for the management of units of the National Park System by such means and measures as will conserve park resources and provide for their use and enjoyment by future generations.

Eagle Crest Energy Company ("Eagle Crest") is the applicant for a Bureau of Land Management ("BLM") right-of-way and a Federal Energy Regulatory Commission ("FERC") licensee of a 1300 megawatt project partially on BLM land located in Eastern Riverside County, California, which is known as the Eagle Mountain Pumped Storage Hydroelectric Project (the "FERC Project"). Eagle Mountain Acquisition, LLC, Eagle Mountain, LLC and Kaiser Eagle Mountain, LLC own various interests in fee, unpatented mining and mill site claims and personal property in and around the FERC Project Area. (Collectively, "Eagle Crest Entities")

**Commented [GB1]:** ECE's affiliates own lands outside the FERC project boundary. We would prefer this not to be a defined term so as not to confuse the larger, general area where private lands are located, with the smaller area inside the FERC boundary. This agreement pertains to the larger area, not just to lands inside the FERC boundary.

**RECITALS**

**WHEREAS**, Eagle Crest has filed a right-of-way (ROW) grant application for a Gen-tie line, a water pipeline and portions of the Central Project area ("Proposed Action") that are located on federal lands pursuant to the Federal Land Policy Management Act ("FLPMA") Title V with the BLM a bureau within the Department; and

**WHEREAS**, the Federal Energy Regulatory Commission ("FERC") prepared a Final Environmental Impact Statement ("FEIS") (2014) on the FERC Project including the Proposed Action under consideration by BLM and then, pursuant to the Federal Power Act, 16 U.S.C. §§ 791a-828c ("FPA"), issued Eagle Crest a License (FERC No. 13123-002) on June 19, 2014 to construct, operate and maintain the 1300 megawatt FERC Project on public and private lands; and

**WHEREAS**, the FERC Project is located adjacent (1.5 – 5 miles) to the current boundary of Joshua Tree National Park (“JTNP”), which is managed under the authority of the National Park Service (“NPS”), a bureau within the Department; and

WHEREAS, in 2016, the NPS issued an Environmental Assessment and Finding of No Significant Impact for the Eagle Mountain Boundary Study Including Possible Land Withdrawal and has recommended that certain public lands in the Eagle Mountain Area outside the FERC Project boundary be transferred to NPS for inclusion in JTNP; and

WHEREAS, Upon the application of NPS, the U.S. Department of the Interior has segregated 22,000 acres of BLM-administered land surrounding the FERC Project boundary while it considers the withdrawal and transfer of the lands from BLM to NPS for inclusion in JTNP. U.S. Department of the Interior, “Notice of Proposed Withdrawal and Notice of Public Meeting: California,” 81 Fed. Reg. 81,798 (November 18, 2016) (“Notice of Withdrawal”); and

WHEREAS, the Eagle Crest Entities do not oppose the withdrawal of land surrounding the FERC Project area should the Department determine that the withdrawal and transfer of those lands to the NPS is in the public interest; and

**WHEREAS**, the BLM is currently in the process of reviewing the Proposed Action pursuant to applicable federal laws, regulations and guidance and has, among other things, prepared an Environmental Assessment (“EA”) (October 2016) that tiers to the FERC FEIS. In April, 2017, the BLM issued a Finding of No Significant Impact (FONSI). The EA/FONSI has analyzed the mitigation measures imposed in the FERC License to avoid, minimize and/or mitigate potential environmental and other impacts and new information relating to the Proposed Action; and

**WHEREAS**, the FERC License identifies several mitigation measures to address potential impacts from the FERC Project to resources important to JTNP which require cooperation and coordination between Eagle Crest and NPS, specifically: participation in the FERC-approved Resource Management Plans Technical Advisory Teams and the ongoing opportunity for NPS to review and comment on the following Resource Management Plans prior to approval of the Plans by FERC: Site Investigation Plan, Facility Lighting Design Night Sky Monitoring Plan and Visual Effects Protection Plan, Aquifer Testing Plan, Groundwater Quality Monitoring Plan, Groundwater Level Monitoring Plan, Excavated Materials Plan, Air Quality Monitoring and Protection Plan, Couch’s Spadefoot Toad Protection Plan, Transmission Line Avian Protection Plan, Nesting Migratory Bird Protection Plan, Nesting Raptors Protection Plan, Burrowing Owl Protection Plan, Coordination of Construction Schedules and Public Notice Plan, Desert Tortoise Habitat and Mitigation Plan, Desert Tortoise Clearance and Relocation/Translocation Plan, Revised Revegetation Plan, Salt Management Storage and Disposal Plan, Reverse Osmosis and Desalination Facilities Plan, Predator Control Plan, Avian Protection Plan, Desalination Pond Deterrence Plan, Wildlife Protection Plan (including plans for badgers, kit foxes and bats), Special Status Plant Protection and Invasive Species Monitoring and Control Plan and the opportunity for NPS to receive copies of License-required air, water and wildlife monitoring data as they are provided to FERC; and

**Commented [bg2]:** The list of plans in this paragraph is different from the list of plans in Section 1.A. The lists should be the same. Also, the NPS would like to include the Historic Properties Management Plan, which is also required by the FERC license, in this list.

WHEREAS, NPS intends to monitor impacts ~~from the FERC Project onto~~ JTNP resources (including but not limited to wildlife, air, soundscape, night-skies and water) ~~from existing NPS monitoring stations within JTNP and NPS will incur certain costs in employee time to monitor these resources. Eagle Crest will enter into a funding agreement or other financial mechanism to reimburse the NPS for these reasonable employee costs;~~ and

Commented [GB3]: Removed because ECE will no longer be providing funding to NPS.

WHEREAS, the Eagle Crest Entities ~~desire have agreed to grant to NPS an irrevocable offer to dedicate or an option to purchase for a nominal price (\$1.00) to see their interests in the fee lands and unpatented mining and mill site claims in the FERC Project Area incorporated into JTNP in the future when the Eagle Crest Entities determine that such lands and interests in lands are no longer needed for their private purposes with conveyance to occur as described herein;~~ and

WHEREAS, ~~it is in the mutual interests of the Eagle Crest Entities and NPS have agreed to work together as "good neighbors" and JTNP has agreed, based on the commitments in this Cooperative Agreement, not to oppose any BLM Record of Decision approving the Proposed Action and to state publically that, with this Cooperative Agreement, NPS has established a "good neighbor" to establish a good working relationship with Eagle Crest concerning the FERC Project and JTNP which is adequate to address its concerns over potential FERC Project impacts to JTNP by: a) to facilitate JTNP's ongoing reviewing role in the License-required Plans, participation in the Advisory Technical Teams and access to monitoring data required by the License; b) JTNP's separate monitoring efforts in JTNP, to be paid for by Eagle Crest; and e) to execute the an~~ irrevocable dedication or option to purchase for a nominal fee (\$1) the various interests in fee, unpatented mining ~~and mill site~~ claims and personal property owned by the Eagle Crest Entities in the FERC Project ~~a~~Area ~~with conveyance to occur as described herein; and~~

WHEREAS, ~~this Agreement shall benefit both NPS and Eagle Crest by allowing the implementation of the FERC Project while protecting the natural resources of JTNP; and~~

WHEREAS, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, both parties intend to be legally bound by Agreement:

NOW, THEREFORE, ~~the~~ Eagle Crest ~~Entities~~ and ~~the Department~~ NPS (collectively, the "Parties") agree that there is a need for the Parties to coordinate regarding the implementation of their Agreement.

## AGREEMENT

### **I. NPS Review of Specified Plans**

A. As required by the FERC License, Eagle Crest ~~has provided or~~ will provide NPS with an opportunity to review and comment on the following Resource Management Plans prior to approval of the Plans by ~~FERC~~: Site Investigation Plan, Groundwater Level Monitoring Plan, Groundwater Quality Monitoring Plan, Aquifer Testing and Seepage Management Plan,

Commented [bg4]: See comment on page 1 about making the listing of plans consistent and including the Historic Properties Mgmt Plan. It also appears that the following plans are omitted from this list but included in the earlier list: Nesting Migratory Bird Protection Plan, Nesting Raptors Protection Plan, and Burrowing Owl Protection Plan.



Reverse Osmosis and Desalination Facilities Plan, Salt Management Storage and Disposal Plan, Revised Revegetation Plan, Invasive Species Monitoring and Control Plan, Couch's Spadefoot Toad Protection Plan, Special-Status Plants Protection Plan, Avian Protection Plan, Avian Protection Desalinization Pond Deterrence Plan, Wildlife Protection Plan, Desert Tortoise Clearance and Relocation/Translocation Plan, Desert Tortoise Habitat Mitigation Plan, Predator Monitoring and Control Plan, Coordination of Construction Schedules and Public Notice Plan, Facility Lighting Design, Night Sky Monitoring Plan, Visual Effects Protection Plan and Air Quality Monitoring and Protection Plan (collectively, "Resource Plans"). Review and comment by the NPS must be within the timeframes specified by FERC, unless otherwise agreed.

B. Any costs and expenses associated with NPS's review and comment on the Resource Plans identified above and participation in Advisory Technical Teams shall be borne by NPS.

C. Eagle Crest acknowledges that NPS is not obligated by the FERC license to comment on these plans or to participate in Advisory Technical Teams, that NPS review of plans and participation on technical teams involves a substantial commitment of NPS staff resources, that NPS has timely commented on all plans previously provided to NPS, and that input from NPS is furthers Eagle Crest's efforts to improve the design and operation the FERC Project.

Commented [GB5]: This paragraph addresses the consideration issue that is related to the option contract. This consideration will be repeated in the option contract.

D. Eagle Crest agrees to work in good faith with NPS to resolve concerns identified by NPS (i) in its comments on the aforementioned plans or (ii) through NPS's participation on an Advisory Technical Team.

E. Should NPS exercise the option referred to in Section II below, NPS agrees to undertake the work necessary under applicable law to change the park boundary at its sole cost and expense.

Commented [GB6]: This paragraph also addresses the consideration issue that is related to the option contract and it will be included in the option contract.

#### ~~Mitigation Monitoring Funding Agreement~~

A. ~~Eagle Crest shall reimburse NPS for reasonable costs incurred by NPS in monitoring construction impacts to natural resources (including but not limited to wildlife, air, soundscape, night skies and water) in JTNP from monitoring stations and NPS employees working within JTNP;~~

B. ~~Eagle Crest shall reimburse NPS for reasonable costs incurred by NPS in monitoring impacts to the Nelson's bighorn sheep herd (that migrates in and out of JTNP) from the above ground mining activities in the Western Area of the FERC Project Area adjacent to JTNP.~~

C. ~~NPS has analyzed and projected the reasonable professional, staff and equipment costs and expenses associated with these monitoring measures and estimates these costs and expenses at a total of \$\_\_\_\_\_ per year for both monitoring efforts. See Appendix A, "NPS Budget Calculation." Eagle Crest agrees to pay NPS \$\_\_\_\_\_ on October 1 annually for the five year term of the Agreement. NPS agrees that the costs and expenses shall not exceed \$\_\_\_\_\_ per year during the five year term of this Agreement.~~



~~D. The obligation of Eagle Crest is to provide the funding as described in the Agreement Section I.C. NPS agrees that it will make no additional demands for funding during the term of the Agreement. NPS retains the discretion to use the funds provided by Eagle Crest in the manner it deems appropriate without the prior consent of Eagle Crest.~~

### ~~III-II. Irrevocable Offer of Dedication~~ Option to Purchase

1) Concurrently with the execution of this Agreement, ~~the~~ Eagle Crest Entities agree to ~~execute make an irrevocable offer of dedication or~~ option to purchase at a nominal cost (\$1.00) (“Option Agreement”) to NPS of the various interests in fee, unpatented mining and mill site claims and personal property owned by the Eagle Crest Entities in the FERC Project ~~area~~ Area. The Option Agreement will ~~These lands~~ include the Western Lands, to be defined, Lands outside the FERC Project Boundary and FERC Project Lands (collectively “Lands”), which are depicted on the attached map.

Commented [GB7]: We think that an Option Contract makes more sense. Offers of Dedication are more typically used for state and local entities than NPS. NPS will prepare an Option Agreement for ECE's review as soon as possible. Because we will have a separate Option Contract, this Agreement would not need to describe the steps for the conveyance. Appropriate paragraphs from this section will be included in the option contract.

2) Except for private lands owned by the Eagle Crest Entities that are within the existing boundary of JTNP, ~~No~~ lands may be conveyed by the Eagle Crest Entities to NPS until the notes securing the Purchase and Sale Agreement (June 25, 2015), for the purchase of Kaiser Eagle Mountain, LLC, the entity that owned the various interests in fee, unpatented mining claims and personal property in the FERC Project Area, have been paid in full. Any conveyance of lands within the current JTNP boundary prior to the satisfaction of the aforementioned notes is within the sole discretion of the Eagle Crest Entities.

Commented [GB8]: Eagle Crest owns title to a few small inholdings inside the current park boundary. No mining occurs on these parcels and they are inaccessible by road. NPS would like to explore whether those parcels could be transferred to NPS in the next year, rather than waiting until 2025 when the last “note” referred to here is paid in full. The notes won't be paid off for another 8 years at least.

3) No lands may be conveyed by the Eagle Crest Entities to NPS until the 2015 Mining Lease Agreement granting Eagle Mountain Mining and Railroad Company, LLC (“EMMR”) certain rights to conduct above-ground mining for materials with an initial term of 50 years subject to renewal terms with no more than 50 additional years (“EMMR Lease”) has terminated either due to failure to exercise an option or the termination after the expiration of any of the relevant terms (*i.e.*, 40, 60, 80 or 100 years). This provision only applies to lands encumbered by the EMMR lease.

Commented [GB9]: This relates to my comment above. It is intended to clarify that the parcels inside the current park boundary – which are not encumbered by the EMMR lease – could be conveyed earlier.

4) No Lands within the FERC Project Boundary may be conveyed until the FERC Project ceases operations and the FERC Federal Power Act purposes for the FERC Project Lands have terminated.

~~5) If the notes have been paid in full and any portion of the the Western Lands and Lands outside the FERC Project Boundary are no longer encumbered by the EMMR Lease, the Eagle Crest Entities will notify the NPS that such these Lands may be available for conveyance, and NPS (or an NGO designated by NPS) shall have the option to accept such conveyance according to the terms of the Option Agreement conveyed to NPS during FERC Project operations.~~

Commented [GB10]: Numbering needs to be fixed below

5) In order to preserve the condition of the Lands for possible future inclusion in JTNP, the Eagle Crest Entities agree as follows:

Commented [GB11]: These provisions were in the Settlement Agreement and ECE was OK with them.

a. The Eagle Crest Entities forever waive any and all rights to explore, mine or

develop the Lands for milling, processing or extractive mining and any and all rights to conduct activities under the General Mining Law of 1872, as amended, the various federal mineral leasing acts, and the Materials Act of 1947. The Eagle Crest Entities waive any and all rights to develop the Lands other than for the FERC Project. The Eagle Crest Entities also waive any and all rights to sell, lease, transfer or otherwise allow any other individual or entity to develop the Lands or conduct extractive uses thereon except for the activities that EMMR is specifically allowed to conduct under the EMMR Lease.

- b. The Eagle Crest Entities agree that they will cooperate with NPS (and any NGO identified by NPS) in any negotiations with EMMR to terminate EMMR's rights and interests under the 2015 EMMR Lease. Notwithstanding Article 23 of the EMMR Lease, if NPS or such NGO reach an agreement with EMMR concerning the relinquishment of any or all of EMMR's rights and interests under the EMMR Lease to NPS or NGO, the Eagle Crest Entities shall not unreasonably withhold their consent to the conveyance, assignment or transfer of such rights and interests to the NPS or the NGO and will execute a written approval authorizing such conveyance, assignment or transfer.

~~a-c.~~ Except for the Option Agreement, the Eagle Crest Entities will not sell, lease, assign, transfer, donate, encumber, or hypothecate any of the Lands outside the FERC Project boundary (i.e., non-Project Lands).

6) The United States (NPS) is under no obligation to accept the ~~donation~~ conveyance of any particular parcel for conveyance. If the United States declines to accept the conveyance of any portion of the Lands, the Eagle Crest Entities agree to offer to donate and convey the Property to a non-profit entity identified by NPS.

7) The Eagle Crest Entities agree not to challenge a withdrawal and transfer of public lands outside the FERC Project boundary from BLM to NPS should the Department determine that such action is in the public interest.

8) The Eagle Crest Entities agree to provide NPS with administrative access to that portion of Eagle Mountain Road that they control and to Kaiser Road upon execution of this Agreement. NPS agrees to notify Eagle Crest Energy prior to using either road.

#### **IV.III. NPS "Good Neighbor" Commitments by the Parties to Ongoing Cooperation**

~~JTNP agrees to cease its efforts to encourage BLM to prepare an environmental impact study for the issuance of the Proposed Action or in any other way work to oppose the FERC Project or any BLM Record of Decision approving the Proposed Action.~~

A. JTNP agrees to state publically that, with this Agreement, Through this Agreement, the Parties NPS has have established a "good neighbor" cooperative working relationship with Eagle Crest concerning the FERC Project and JTNP which is adequate to address its concerns over the potential impacts from the FERC Project to JTNP as demonstrated by:

- 1) NPS's Pp participation in the review of the License-required Plans,

Advisory Technical Teams and access to monitoring data required by the License;

2) ~~JTNP's separate monitoring effort within the boundaries of JTNP of FERC Project construction impacts to JTNP natural resources and the monitoring of the above ground mining activity and the Nelson's bighorn sheep; and~~

3) The ~~execution of an Option Agreement irrevocable dedication or option to purchase for a nominal fee (\$1) concerning~~ the various interests in fee, unpatented mining ~~and mill site~~ claims and personal property owned by the Eagle Crest Entities in the FERC Project ~~Area with conveyance to occur as provided for in Section III.~~

#### ~~V.~~IV. Term and Duration of the Agreement

~~A. This Agreement is contingent upon BLM's issuance of a Record of Decision in 2017 approving the Proposed Action.~~

~~B. NPS intends to execute this agreement once internal contract/agreement review is completed. NPS does not expect scope and content to change.~~

~~A. Subject to the issuance of a decision document,~~ This Agreement shall become effective upon ~~signature approval~~ by both Parties. The term of this Agreement shall be for five years. Should the Parties jointly agree that changes or modifications to the ~~Cooperative~~ Agreement are necessary, such changes and/or modifications shall be adopted by a written amendment to this ~~Cooperative~~ Agreement.

~~C.B. Either Party may withdraw from this Agreement after 60 days written notice to the other party.~~

Commented [GB12]: New

#### ~~VI.~~V. Notices

All correspondence ~~and notices~~ regarding this Agreement ~~including invoices, payments, and notices,~~ shall be directed to the following persons at the following addresses and telephone numbers:

##### Department:

Assistant Secretary, Fish and Wildlife and Parks  
U.S. Department of the Interior  
1849 C Street, NW  
Room 3160  
Washington, D.C. 20240

##### NPS:

~~David Smith~~Superintendent  
Joshua Tree National Park

74485 National Park Drive  
Twentynine Palms, CA 92277-3597  
Phone: 760-367-5563  
Fax: 760-367-6392  
David\_Smith@nps.gov

**EAGLE CREST ENTITIES:**

Steve Lowe  
3000 Ocean Park Blvd, Suite 1020  
Santa Monica, CA 90405  
Phone: 310-450-9090  
Fax: 310-450-9494  
slowe@eaglecrestenergy.com

Written correspondence shall be sent either by personal delivery (including overnight delivery service), by U.S. Mail, fax, or e-mail. Correspondence shall be considered delivered when actually received. The Parties will promptly provide notice to the other parties should there be any change in the contract address.

**~~VII.~~ VI. Liability and Indemnification**

Eagle Crest shall indemnify, defend and hold harmless the United States of America and its agents and employees from and against any and all liabilities, obligations, losses, damages, judgments, claims, actions, suits, penalties, fines, costs and expenses (including reasonable attorneys' fees and experts' fees) of any kind and nature whatsoever arising out of the acts or omissions by of Eagle Crest, its employees, agents or contractors (including any contractor's subcontractors), occurring on JTNP property including injury to persons (including injury resulting in death) and damage to JTNP property. Eagle Crest shall promptly pay the United States of America the full value of all damages to the lands or other property of the United States of America located within JTNP caused by or arising out of acts or omissions by Eagle Crest, its employees, agents, representatives, or contractors (including any contractor's subcontractors) occurring on JTNP property or, as agreed to by the parties, shall undertake the remedial work to repair or replace the damaged lands or property. Eagle Crest will cooperate with the NPS in the investigation and defense of any claims that may be filed with the NPS arising out of the activities of Eagle Crest, its employees, agents, representatives or contractors (including any contractor's subcontractors) occurring on JTNP property.

**~~VIII.~~ VII. Miscellaneous**

A. Non-Discrimination. All activities pursuant to or in association with this Agreement shall be conducted without discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex, as well as in compliance with the requirements of any applicable federal laws, regulations, or policies prohibiting such discrimination.

B. NPS Appropriations. Pursuant to 31 U.S.C. § 1341, nothing contained in this Agreement shall be construed to obligate NPS, the Department, or the United States of America to any current or future expenditure of funds in advance of the availability of appropriations from Congress and their administrative allocation for the purposes of this Agreement, nor does this Agreement obligate NPS, the Department, or the United States of America to spend funds on any particular project or purpose, even if funds are available. Non-Fund Obligor Document. This Agreement is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties will be handled in accordance with applicable laws, regulations, and procedures. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the Parties and shall be independently authorized by appropriate statutory authority. This Agreement does not provide such authority. Specifically, this Agreement does not establish authority for a noncompetitive award to the Eagle Crest Entities of any contract or other agreement. Any contract or agreement for services must fully comply with all applicable requirements for competition.

C. Limitations on Lobbying. To the extent that the Eagle Crest Entities commits in this Agreement or any related agreement to raise funds from non-federal sources for a particular purpose or project to benefit NPS ~~beyond the scope of the cost reimbursement purpose of this Agreement,~~ the Eagle Crest Entities agrees that it will not to lobby for or otherwise seek the appropriation of funds from Congress to meet that particular purpose or project to benefit NPS. Eagle Crest may not use any appropriated funds (including property, utilities, or services acquired with, or supported by, appropriated funds) to lobby or attempt to influence Congress or any official of any government to fulfill the particular purpose or project to benefit NPS.

D. Compliance with Applicable Laws. This Agreement and performance hereunder is subject to all applicable laws, regulations and government policies, whether now in force or hereafter enacted or promulgated. Nothing in this Agreement shall be construed as (i) in any way impairing the authority of the Department or NPS to supervise, regulate, and administer its property under applicable laws, regulations, and management plans or policies as they may be modified from time-to-time or (ii) inconsistent with or contrary to the purpose or intent of any Act of Congress.

E. Disclaimers of Government Endorsement. The Eagle Crest Entities shall not publicize or circulate any materials (including advertisements, solicitations, brochures, press releases, speeches, pictures, movies, articles, manuscripts, or other publications) suggesting, expressly or implicitly, that the United States of America, the Department, NPS, or any government employee endorses any business, brands, goods or services.

F. Merger. This Agreement, together with any written agreement modification entered into pursuant hereto, contains all the terms and conditions agreed to by the parties, and supersedes any prior agreements between the parties, with respect to the subject matter hereof.

G. Modifications. This Agreement may be extended, renewed, supplemented or amended only when agreed to in writing by the NPS and Eagle Crest.

Commented [GB13]: Redundant with Section IV(A).

H. Waiver. No waiver of any provisions of this Agreement shall be effective unless

made in writing and signed by the waiving party. No waiver of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof.

I. Assignment; Binding Effect. Neither pParty may assign any of its rights or obligations under this Agreement without the prior written consent of the other party. This Agreement shall be binding upon and inure to the benefit of the pParties hereto and their respective successors and permitted assigns. The pParties waive the defense of lack of consideration.

J. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original (including copies sent to a Pparty by facsimile transmission) as against the pParty signing such counterpart, but which together shall constitute one and the same instrument.

K. Member of Congress. Pursuant to 41 U.S.C. § 22, no Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or adopted by or on behalf of the United States of America, or to any benefit to arise thereupon.

L. No Agency. The Eagle Crest Entities are is not an agent or representative of the United States of America, the Department, or NPS, nor will the Eagle Crest Entities represent itself/hemselves as such to third parties. Departmental and NPS employees are not agents of the Eagle Crest Entities and will not represent themselves as such to third parties. Nothing in this Agreement shall at any time be construed so as to create the relationship of employer and employee, principal and agent, or joint venture as between any of the Eagle Crest Entities and NPS or the Department.

M. Non-Exclusive Agreement. This Agreement in no way restricts eitherthe Department, the NPS or Eagle Crest from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.

N. No Third-Party Beneficiaries. Unless expressly stated herein, nothing in this Agreement is intended to grant any legally enforceable rights or provide any benefits to any third party.

O. Survival. The terms of this Agreement that by their nature are reasonably intended by the Pparties to survive termination shall survive the expiration or termination of this Agreement.

P. Partial Invalidity. If any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to the parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each



provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Q. Interpretation. The headings of the Articles in this Agreement are inserted only as a matter of convenience and shall in no way be construed to define or limit the scope or intent, or affect the meaning or interpretation, of this Agreement. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” This Agreement shall not be construed in favor of or against either pParty by reason of the extent to which such Pparty or its professional advisors participated in the preparation of this Agreement or based on a party’s undertaking of any obligation under this Agreement.

R. Further Assurances. If reasonably requested by one pParty, the other party shall execute and deliver such other documents and take such other action as may be necessary to effect the terms of this Agreement.

S. Disputes and Venue. The Pparties agree that in the event of a dispute between them, the Department or NPS, as the case may be, and the Eagle Crest Entities shall promptly use their best efforts to resolve the dispute in an informal fashion through communication and consultation, or other forms of non-binding alternative dispute resolution that are mutually acceptable to the pParties, as set forth above. The pParties agree that the venue to commence litigation of any disputes stemming from this Agreement shall be a Federal court with appropriate jurisdiction within the State of California.

#### ~~IX. Appendix~~

##### ~~A. NPS Budget Calculations~~

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the last written date below.

### **SIGNATURES**

**From:** [Rebecca Watson](#)  
**To:** [Josephson, Temi](#)  
**Cc:** [Barbara Goodyear](#); [Brown, Laura](#)  
**Subject:** Re: Draft Agreement between Eagle Crest and NPS  
**Date:** Friday, July 14, 2017 5:23:32 PM

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Thank you. We will review the document and get back to you shortly.  
Regards, Rebecca Watson

Rebecca W. Watson

On Jul 14, 2017, at 2:54 PM, Josephson, Temi <[temi.josephson@sol.doi.gov](mailto:temi.josephson@sol.doi.gov)> wrote:

Rebecca,

Attached, please find the Department's comments and edits on the draft agreement that Eagle Crest sent to the NPS in January. Due to the change in administration and the need for this matter to be reviewed at the Departmental level, it has taken longer than we expected to transmit revisions to you. We appreciate your understanding.

The following information is provided to assist you in your review of the document. As an initial matter, you will note that the agreement would now be an agreement between Eagle Crest and the Department, on behalf of the NPS. On a day-to-day level, the agreement envisions that NPS and Eagle Crest will work together cooperatively on issues of mutual interest. However, the Department believes that this agreement should be executed at the Departmental level.

Provisions relating to the NPS's Boundary Study proposal have been added to the agreement. It is our understanding, based on Eagle Crest's comments during the public review process for the Boundary Study, that Eagle Crest did not oppose the withdrawal of certain public lands outside the FERC project boundary or the inclusion of those lands inside an expanded park boundary, should the Department determine that expansion of the park boundary is in the public interest. The Finding of No Significant Impact for the Boundary Study identified a modified version of Alternative C for implementation. The NPS adopted these modifications based on comments from Eagle Crest and consultation with the Bureau of Land Management.

We have modified your original language regarding a "good neighbor" relationship to state that the NPS and Eagle Crest desire to establish a good working relationship going forward.

The Department has determined that Eagle Crest should not reimburse NPS for monitoring costs associated with the project. As a result, the original language in Section II of the agreement has been removed.

The Department is very appreciative of Eagle Crest's desire to convey lands to the NPS at an appropriate time. To make this possibility more concrete, we have included a number of revisions to the agreement that introduce the concept of an option agreement (to be prepared) which would become a companion document to this agreement. The option contract would include provisions for phased transfers of land to the NPS, depending on the status of the FERC project and/or the status of Eagle Crest's financial obligations to CIL&D. The provisions that describe this concept were built off of provisions that Eagle Crest was willing to agree to its earlier negotiations with NPS. You will see these concepts addressed in new Section II.

If you have any questions about the Department's revisions to the agreement, please contact Barbara Goodyear. Barbara will be the POC for further revision of the draft agreement. I will work with Barbara to finalize and gain final approval for DOI's participation in the agreement.

Thank you,

Temi Josephson  
Regional Solicitor

Barbara Goodyear  
Field Solicitor

**Clementine Josephson  
Regional Solicitor  
Pacific Southwest Region**

**Department of the Interior  
Office of the Solicitor  
2800 Cottage Way, E-1712  
Sacramento, California 95825**

**Tel.: 916-978-5682  
Fax: 916-978-5694**

**[clementine.josephson@sol.doi.gov](mailto:clementine.josephson@sol.doi.gov)**

<ECE Agreement\_2017\_06\_23 (2).docx>

**From:** [Rebecca Watson](#)  
**To:** [Josephson, Temi](#)  
**Cc:** [Barbara Goodyear](#); [Brown, Laura](#)  
**Subject:** Re: Draft Agreement between Eagle Crest and NPS  
**Date:** Friday, July 14, 2017 5:23:42 PM

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Thank you. We will review the document and get back to you shortly.  
Regards, Rebecca Watson

Rebecca W. Watson

On Jul 14, 2017, at 2:54 PM, Josephson, Temi <[temi.josephson@sol.doi.gov](mailto:temi.josephson@sol.doi.gov)> wrote:

Rebecca,

Attached, please find the Department's comments and edits on the draft agreement that Eagle Crest sent to the NPS in January. Due to the change in administration and the need for this matter to be reviewed at the Departmental level, it has taken longer than we expected to transmit revisions to you. We appreciate your understanding.

The following information is provided to assist you in your review of the document. As an initial matter, you will note that the agreement would now be an agreement between Eagle Crest and the Department, on behalf of the NPS. On a day-to-day level, the agreement envisions that NPS and Eagle Crest will work together cooperatively on issues of mutual interest. However, the Department believes that this agreement should be executed at the Departmental level.

Provisions relating to the NPS's Boundary Study proposal have been added to the agreement. It is our understanding, based on Eagle Crest's comments during the public review process for the Boundary Study, that Eagle Crest did not oppose the withdrawal of certain public lands outside the FERC project boundary or the inclusion of those lands inside an expanded park boundary, should the Department determine that expansion of the park boundary is in the public interest. The Finding of No Significant Impact for the Boundary Study identified a modified version of Alternative C for implementation. The NPS adopted these modifications based on comments from Eagle Crest and consultation with the Bureau of Land Management.

We have modified your original language regarding a "good neighbor" relationship to state that the NPS and Eagle Crest desire to establish a good working relationship going forward.

The Department has determined that Eagle Crest should not reimburse NPS for monitoring costs associated with the project. As a result, the original language in Section II of the agreement has been removed.

The Department is very appreciative of Eagle Crest's desire to convey lands to the NPS at an appropriate time. To make this possibility more concrete, we have included a number of revisions to the agreement that introduce the concept of an option agreement (to be prepared) which would become a companion document to this agreement. The option contract would include provisions for phased transfers of land to the NPS, depending on the status of the FERC project and/or the status of Eagle Crest's financial obligations to CIL&D. The provisions that describe this concept were built off of provisions that Eagle Crest was willing to agree to its earlier negotiations with NPS. You will see these concepts addressed in new Section II.

If you have any questions about the Department's revisions to the agreement, please contact Barbara Goodyear. Barbara will be the POC for further revision of the draft agreement. I will work with Barbara to finalize and gain final approval for DOI's participation in the agreement.

Thank you,

Temi Josephson  
Regional Solicitor

Barbara Goodyear  
Field Solicitor

**Clementine Josephson  
Regional Solicitor  
Pacific Southwest Region**

**Department of the Interior  
Office of the Solicitor  
2800 Cottage Way, E-1712  
Sacramento, California 95825**

**Tel.: 916-978-5682  
Fax: 916-978-5694**

**[clementine.josephson@sol.doi.gov](mailto:clementine.josephson@sol.doi.gov)**

<ECE Agreement\_2017\_06\_23 (2).docx>

**From:** [Rebecca Watson](#)  
**To:** ["Josephson, Temi"](#)  
**Cc:** [Barbara Goodyear](#); [Brown, Laura](#)  
**Subject:** RE: Draft Agreement between Eagle Crest and NPS  
**Date:** Monday, July 17, 2017 1:06:17 PM

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Dear Temi, Laura and Barbara – Thank you for sending me the revised draft agreement. I will confer with Eagle Crest Energy and get back to you after we have had the time to review the several substantive changes proposed to the draft we sent Barbara and David 6 months ago. Regards, Rebecca

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Rebecca W. Watson  
**WELBORN SULLIVAN MECK & TOOLEY, P.C.**  
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**EMAIL:** [rwatson@wsmtlaw.com](mailto:rwatson@wsmtlaw.com)  
**MAIN:** 303-830-2500  
**DIRECT:** 303-376-4463  
**FAX:** 303-832-2366  
**WEBSITE:** [www.wsmtlaw.com](http://www.wsmtlaw.com)  
[HTTPS://WWW.LINKEDIN.COM/IN/RWLINKEDLN](https://www.linkedin.com/in/rwlinkedln)

#### LAW OF THE LAND

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**From:** Josephson, Temi [mailto:[temi.josephson@sol.doi.gov](mailto:temi.josephson@sol.doi.gov)]  
**Sent:** Friday, July 14, 2017 2:54 PM  
**To:** Rebecca Watson  
**Cc:** Barbara Goodyear; Brown, Laura  
**Subject:** Draft Agreement between Eagle Crest and NPS

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Temi Josephson  
Regional Solicitor

Barbara Goodyear  
Field Solicitor

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[clementine.josephson@sol.doi.gov](mailto:clementine.josephson@sol.doi.gov)

**From:** [Josephson, Temi](#)  
**To:** [Rebecca Watson](#)  
**Subject:** EC Agreement  
**Date:** Friday, September 1, 2017 2:49:15 PM

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Rebecca,

I will do all I can to help negotiate a satisfactory agreement - and intend to participate with Barbara, SOL attorneys from Parks and Wildlife and NPS in reaching an agreement. Perhaps it would be in best interest of both EC and NPS if the agreement just sought cooperation, perhaps occasional meetings to exchange info, etc. I really do not know how NPCA factors into any commitments in the agreement. Since this is such a long-term project both in terms of the EC PSP and Kaiser's ability to remove stored materials and waste piles, while a statement of intent may be appropriate, it may make sense to defer decisions that require more certainty than is known now to a later date.

I will let DC SOL know that you have meetings set and will proceed with your schedule.

Temi

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**From:** [Rebecca Watson](#)  
**To:** [Josephson, Temi](#)  
**Subject:** Re: EC Agreement  
**Date:** Friday, September 1, 2017 4:23:30 PM

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Temi - sorry for the call drop, but that is "radio free" West for you. I appreciated our discussion and was simply going to say that if it would be of benefit to either ECE or NPS or their lawyers, happy to meet with you and Rick. I am assuming Rick will be in the Jorjani meeting and that would give us the chance to brief him. Otherwise we are open on Wednesday from 11:30- 3:30. As I said on our previous call our immediate focus is on the issuance of BLM's ROD. I will consider the type of agreement you describe after next week and conversations with ECE and NextEra. Thanks for the call, your efforts are appreciated.  
Rebecca

Rebecca W. Watson

On Sep 1, 2017, at 12:49 PM, Josephson, Temi <[temi.josephson@sol.doi.gov](mailto:temi.josephson@sol.doi.gov)> wrote:

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**From:** [Rebecca Watson](#)  
**To:** [Josephson, Temi](#)  
**Subject:** Re: EC Agreement  
**Date:** Friday, September 1, 2017 4:23:56 PM

---

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